

## UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

KATHERYN GIOVANNI,

No. C 12-2530 LB

Plaintiff,

v.

**ORDER DISMISSING WITHOUT  
PREJUDICE PLAINTIFF'S ACTION**BANK OF AMERICA, NATIONAL  
ASSOCIATION, an FDIC insured corporation  
and DOES 1 through 100, inclusive,Defendants.  
\_\_\_\_\_

Plaintiff brought this lawsuit against Bank of America, N.A. ("BOA") for claims arising out of Bank of America's informing credit reporting agencies that she had overdue payments on her credit account. *See generally* Complaint, ECF No. 1.<sup>1</sup> On April 17, 2013, the court granted BOA's motion and dismissed some claims in Plaintiff's second amended complaint with prejudice and some without prejudice and with leave to amend within 21 days, or by May 8, 2013. 4/17/2013 Order, ECF No. 45 at 4.

To date, Plaintiff has not filed an amended complaint, and the court has received no further indication that she intends to prosecute this action. *See generally* Docket.

A court may dismiss an action based on a party's failure to prosecute an action. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992). In determining whether to dismiss a claim for

<sup>1</sup> Citations are to the Electronic Case File ("ECF"), with pin cites to the electronically-generated page numbers at the top of the document.

1 failure to prosecute or failure to comply with a court order, the court weighs the following factors:  
2 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its  
3 docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic  
4 alternatives; and (5) the public policy favoring disposition of cases on their merits. *Pagtalunan v.*  
5 *Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik*, 963 F.2d at 1260-61); *Ghazali v. Moran*,  
6 46 F.3d 52, 53 (9th Cir. 1995). These factors are a guide and "are 'not a series of conditions  
7 precedent before the judge can do anything.'" *In re Phenylpropanolamine (PPA) Products Liability*  
8 *Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Valley Eng'rs Inc. v. Elec. Eng'g Co.*, 158  
9 F.3d 1051, 1057 (9th Cir. 1998)). Dismissal is appropriate "where at least four factors support  
10 dismissal, . . . or where at least three factors 'strongly' support dismissal." *Hernandez v. City of El*  
11 *Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (quoting *Ferdik*, 963 F.2d at 1263).

12 Here, four factors support dismissal. Plaintiff has not filed an amended complaint, even though  
13 it is past the court's deadline for doing so. This certainly is not "expeditious litigation," and the  
14 court must keep the cases on its docket moving. There also is no risk of prejudice to the Defendant.  
15 Finally, the court already tried to move this case along by issuing an order that clearly explained to  
16 Plaintiff the deficiencies in her complaint, and gave her leave to file an amended complaint that  
17 corrects those deficiencies.

18 In sum, the court concludes that at least four of the five relevant factors weigh in favor of  
19 dismissal. Accordingly, the court **DISMISSES WITHOUT PREJUDICE** Plaintiff's action for  
20 failure to prosecute. The Clerk of the Court shall close the file.

21 **IT IS SO ORDERED.**

22 Dated: May 22, 2013



23 LAUREL BEELER  
24 United States Magistrate Judge  
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